

For: County Offices

Consideration of Other Assets In Primary Loan Servicing Applications

Approved By: Acting State Executive Director



RAT:LEV:lv

1 Overview

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Background

When a borrower requests Primary Loan Servicing under FmHA Instruction 1951-S, both statute and regulation require that proceeds from the sale of non-essential assets be considered as a cure for the potential or actual default before considering any Primary Loan Servicing option.

In addition, FSA is required to take a lien on all assets of a delinquent borrower, (both essential and non-essential), in consideration for granting any restructuring option under FmHA Instruction 1951-S.

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Purpose

The purpose of this Oregon Notice is to:

- remind DDs, FLMs, FLOs, and CEDs of the importance of considering proceeds from the sale of all classes of the borrower's assets as a means of curing the borrower's potential or actual FSA delinquency
- emphasize the fact that FSA must take a lien on all of the borrower's assets when restructuring a delinquent borrower's FSA indebtedness
- remind FSA employees of the procedural requirements stated in Sections 1951.910 (a) and (b) of FmHA Instruction 1951-S
- revise and replace expiring Oregon Notice FLP-42.

FILING: Preceding FmHA Instruction 1951-S

Disposal

Distribution

March 1, 2002

STO, DD, COR, COC, COF - Including Farm Loan Programs

03-08-01

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2 Action

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Servicing Officer Action

When Primary Loan Servicing is being considered under FmHA Instruction 1951-S, FSA Servicing Officials must evaluate the borrower's financial statement to determine if the borrower has other assets that are not encumbered by an FSA lien. If such assets exist, then the Servicing Official must determine whether or not the unencumbered assets are essential or non-essential, as defined in Section 1951.906 of FmHA Instruction 1951-S.

Section 1951.906 of FmHA Instruction 1951-S states that non-essential assets are those in which the borrower has an ownership interest in that do not contribute a net income for use in paying essential family living expenses or maintaining a sound farming operation. In addition, a non-essential asset is one that could be attached by judgement creditors, and is not considered exempt property in bankruptcy.

Section 1951.910 (a) of FmHA Instruction 1951-S states that the Agency will not write off any debt (or portion of a debt) that could be paid by liquidation of any non-essential asset. In addition, Section 1951.910 (a)(2) clearly states that if a borrower can sell non-essential assets and apply the proceeds to bring or keep the account current, then the borrower is not eligible for either Primary Loan Servicing or a Market Value Buyout.

When a delinquent borrower's is serviced under FmHA Instruction 1951-S, Section 1951.910 (b) unequivocally requires the borrower to pledge ***all assets*** to FSA as security at the time the FSA indebtedness is restructured. Liens will be taken on ***all*** of the borrower's previously non-pledged essential and non-essential assets [including all land, machinery, equipment, vehicles (other than the family car), crops, livestock, inventory, accounts receivable, contract rights, and general intangibles] in consideration for the loan restructuring.

FSA is required to take the best lien obtainable on all assets owned by a delinquent borrower receiving Primary Loan Servicing assistance.

Continued on the next page

2 Action, *Continued*

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DD Action

When reviewing any completed loan restructuring action accomplished under FmHA Instruction 1951-S, District Directors need to pay particular attention to the borrower's financial statement to see if there are any non-essential assets that could have been sold and the proceeds used to reduce or eliminate the actual or potential FSA delinquency.

When reviewing the files of delinquent borrowers that received loan servicing under FmHA Instruction 1951-S, District Directors also need to pay particular attention to FSA's collateral and security position to assure that a lien was taken on all of the delinquent borrower's assets when the restructuring was completed.

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STO Action

Each year the STO will conduct State Evaluation Reviews on selected COFs and review loan accounts that have been recently restructured.

3 Contacts

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Contact Persons

If questions arise concerning essential or non-essential assets, or taking a lien on all assets of a delinquent borrower in consideration for FmHA Instruction 1951-S servicing:

- CEDs and FLOs should contact the FLM serving their County Office
 - FLMs and District Directors should contact Lynn Voigt, Bob Perry, or Peter Halvorson in the State Office.
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